IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12162 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HASINABANU WIFE OF HARUNBHAI IBRAHIMBHAI MEMON - Petitioner(s)

Versus

COMMISSIONER OF POLICE SURAT CITY & 2 - Respondent(s)

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Appearance :
MR ANIL S DAVE for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1,
MR PRACHCHHAK, AGP for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

Date : 14/09/2005

ORAL JUDGMENT

1. In exercise of powers conferred under Section 3 (2) of the Gujarat Prevention of Anti Social Activities Act, 1985 ('the Act' for short), Commissioner of Police, Surat City, vide order dated June 6, 2005, annexure-A to

the petition, detained the petitioner-detenue.

2. Averments made in the petition and the grounds of detention manifest that the detaining authority has considered the petitioner as a bootlegger within the meaning of Section 2 (b) of the Act as two cases under the Prohibition Act are registered against the petitioner out of which one is pending investigation and another is pending trial. According to the detaining authority, the activities of the detenue amount to breach of disturbance of public order and therefore, the petitioner is detained.

3. By filing this petition under Article 226 of the Constitution of India, the petitioner has assailed the order of detention on various grounds and prayed to issue a writ of habeas corpus or any other appropriate writ, order or direction quashing and setting aside the impugned order of detention dated June 6, 2005 and to set the petitioner at liberty forthwith.

4. The petitioner has challenged the order of detention on various grounds. Mr.A.S.Dave, learned counsel for the petitioner has restricted his arguments to the effect that registration of two cases under the

Prohibition Act against the petitioner by itself cannot be called breach of disturbance of public order and it is merely a breach of the law and order situation and therefore the subjective satisfaction recorded by the detaining authority cannot be considered as genuine.

5. To buttress the aforesaid submission, learned counsel for the petitioner cited the following judgements ;

(i) Piyush Kantilal Mehta V. Commissioner of Police, AIR 1989 SC 491 ;

(ii) Om Prakash V. Commissioner of Police and others, AIR 1990 SC 496 ; and

(iii) Rashidmiya alias Chhava Ahmedmiya Shaikh V. Police Commissioner, Ahmedabad and another, AIR 1989 SC 1703.

6. Mr.Prachchhak, learned AGP has opposed the petition by filing affidavit in reply as well as by making oral submissions. According to him, the detaining authority has reached the subjective satisfaction for detaining the petitioner in the interest of the society at large. He further submitted that bootlegging activity

is dangerous to public and therefore, it is called breach of public order and not breach of law and order situation. He therefore submitted that this petition be dismissed. In support of his submissions, Mr.Prachchhak has relied upon the decision in the case of Kanuji S. Zala V. State of Gujarat and others, reported in 1999 (2) GLH 415.

7. I have considered the submissions advanced by the learned advocates appearing for the parties. I have also perused the averments made in the petition and also the impugned order of detention as well as two cases registered against the petitioner for commission of the alleged offence under the Prohibition Act.

8. In the case of Piyush Kantilal Mehta (Supra) the Supreme Court has held that it may be that the detenue is a bootlegger within the meaning of S. 2 (b) of the Act, but merely because he is a bootlegger he cannot be preventively detained under the provisions of the Act unless, as laid down in sub-sec. (4) of S.3 of the Act, his activities as a bootlegger affect adversely or are likely to affect adversely the maintenance of public order. A person may be very fierce by nature, but so long as the public generally are not affected by his

activities or conduct, the question of maintenance of public order will not arise. In order that an activity may be said to affect adversely the maintenance of public order, there must be material to show that there has been a feeling of insecurity among the general public. If any act of a person creates panic or fear in the minds of the members of the public upsetting the even tempo of life of the community, such act must be said to have a direct bearing on the question of maintenance of public order. The commission of an offence will not necessarily come within the purview of 'public order'.

9. In Kanuji's case (Supra), in paragraph 6, the Supreme Court has observed that as already stated earlier, in this case the Detaining Authority has specifically mentioned in the grounds that the activity of the detenu was likely to cause harm to the public health and that by itself is sufficient to amount to affecting adversely the public order as defined by the Act. The Detaining Authority has also stated that as a result of resorting to violence by the petitioner for carrying on his bootlegging activity, even tempo of public order has also disturbed on some occasions. In view of the material on record it cannot be said that the satisfaction of the District Magistrate, in this behalf,

was not reasonable or genuine.

10. In Kanuji's Case (Supra), the Supreme Court has also considered three earlier decisions in the case of Piyush Kantilal Mehta (Supra), Om Prakash (supra) and Rashidmiya (Supra) and observed in paragraph 4 that in none of the three cases relied upon by the learned counsel, the point whether public order can be said to have been disturbed on the ground that the activity of the detenu was harmful to the public health arose for consideration and that the detaining authority has not recorded such satisfaction ; moreover, in these three cases the detaining authority has referred to some incidents of beating but there was no material to show that as a result thereof even tempo of public order was disturbed, whereas in the case before the Supreme Court in the case of K.S.Zala v. State of Gujarat (supra), the detaining authority has specifically stated in the grounds of detention that selling of liquor by the petitioner and its consumption by the people of that locality was harmful to their health. It was also stated that the statements of the witnesses clearly show that as a result of violence resorted to by the petitioner even tempo of public life was disturbed in those localities for some time. That material on record clearly shows that

the members of the public of those localities had to run away from there or to go inside their houses and close their doors.

11. If we examine the present case on the anvil of the test which has been applied by the Supreme Court in the case of K.S.Zala (Supra), i.e., with regard to the presence of credible material and as to how the detaining authority has made the mention against the petitioner being an obstruction to the public health and public order, I find that it cannot be applied in the instant case. It is of course true that after narrating the particulars of the criminal cases, the detaining authority has mentioned that the activities of the petitioner were an obstacle to the public health and public order but this bald observation cannot be taken to be decisive so as to arrive at the satisfaction that the activities of the petitioner were prejudicial to the public order or to public health and that tempo of public life was disturbed. No observation made in any part of the judgement can be read in isolation and bereft the context. The judgement is to be read as a whole and even the observations which have been made by the Supreme Court in paragraph 6 of the judgement are to be considered in light of the earlier observations made in

paragraph 5 where presence of credible material before the detaining authority has been insisted upon. Thus, litmus test to find out as to whether it is a case of breach of public order or breach of public health is concerned, credible material has to be there. In the case of K.S.Zala (Supra) before the Supreme Court, the detaining authority had also relied upon the statements of the witnesses so as to show that violence resorted to by the petitioner in that case had disturbed the even tempo of life and the material on record had shown that members of the public of those localities had to run away from there and to go inside their houses and to close their doors. No such fact situation has been mentioned in the present case. Therefore, in my view, merely registration of two cases under the Prohibition Act by itself cannot be considered as in the realm of breach or disturbance of public order merely it is a case of breach of law and order situation and therefore the subjective satisfaction recorded by the detaining authority is vitiated. Therefore, the order of detention passed on the basis of two cases registered against the petitioner cannot be sustained and the petition deserves to be allowed.

12. For the foregoing reasons, the petition succeeds

and accordingly it is allowed. The order of detention dated June 6, 2005 passed against the petitioner – detenue is hereby quashed and set aside. The detenue is ordered to be set at liberty forthwith if she is not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A.M.KAPADIA, J.)

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